



Sen. William R. Haine

Filed: 3/1/2013

09800SB0072sam001

LRB098 02802 JDS 41722 a

1 AMENDMENT TO SENATE BILL 72

2 AMENDMENT NO. _____. Amend Senate Bill 72 on page 1, below
3 line 9, by inserting the following:

4 "Section 7. The Commercial and Public Building Asbestos
5 Abatement Act is amended by changing Section 20 as follows:

6 (225 ILCS 207/20)

7 Sec. 20. Powers and Duties of the Department.

8 (a) The Department is empowered to promulgate any rules
9 necessary to ensure proper implementation and administration
10 of this Act, and compliance with the federal Asbestos School
11 Hazard Abatement Reauthorization Act of 1990.

12 (b) Rules promulgated by the Department shall include, but
13 not be limited to, rules relating to the correct and safe
14 performance of response action services, rules for the
15 assessment of civil penalties for violations of this Act or
16 rules promulgated under it, and rules providing for the

1 training and licensing of persons and firms (i) to perform
2 asbestos inspection, (ii) to perform abatement work, and (iii)
3 to serve as asbestos abatement contractors, response action
4 contractors, and asbestos workers. The Department is empowered
5 to inspect activities regulated by this Act to ensure
6 compliance.

7 Except as otherwise provided by Department rule, on and
8 after the effective date of this amendatory Act of the 98th
9 General Assembly any licensing requirement adopted pursuant to
10 this Section that may be satisfied by an industrial hygienist
11 licensed pursuant to the Industrial Hygienists Licensure Act
12 repealed in this amendatory Act may be satisfied by a Certified
13 Industrial Hygienist certified by the American Board of
14 Industrial Hygiene.

15 (c) In carrying out its responsibilities under this Act,
16 the Department shall:

17 (1) Publish a list of response action contractors
18 licensed under this Act, except that the Department shall
19 not be required to publish a list of licensed asbestos
20 workers; and

21 (2) Adopt rules for the collection of fees for training
22 course approval and for the licensing of inspectors,
23 project designers, contractors, supervisors, and workers.

24 (d) The provisions of the Illinois Administrative
25 Procedure Act are hereby expressly adopted and shall apply to
26 all administrative rules and procedures of the Department of

1 Public Health under this Act, except that in case of conflict
2 between the Illinois Administrative Procedure Act and this Act
3 the provisions of this Act shall control, and except that
4 Section 5-35 of the Illinois Administrative Procedure Act
5 relating to procedures for rulemaking does not apply to the
6 adoption of any rule required by federal law in connection with
7 which the Department is precluded by law from exercising any
8 discretion.

9 (e) All final administrative decisions of the Department
10 under this Act shall be subject to judicial review pursuant to
11 the provisions of the Administrative Review Law and the rules
12 adopted under it. The term "administrative decision" has the
13 meaning ascribed to it in Section 3-101 of the Code of Civil
14 Procedure.

15 (f) The Director, after notice and opportunity for hearing
16 to the applicant or license holder, may deny, suspend, or
17 revoke a license or expunge such person from the State list in
18 any case in which he or she finds that there has been a
19 substantial failure to comply with the provisions of this Act
20 or the standards or rules established under it. Notice shall be
21 provided by certified mail, return receipt requested, or by
22 personal service setting forth the particular response for the
23 proposed action and fixing a date, not less than 15 days from
24 the date of such mailing or service, at which time the
25 applicant, asbestos abatement contractor, or license holder
26 shall be given an opportunity to request hearing.

1 The hearing shall be conducted by the Director or by an
2 individual designated in writing by the Director as Hearing
3 Officer to conduct the hearing. On the basis of any such
4 hearing, or upon default of the asbestos abatement contractor,
5 applicant or license holder, the Director shall make a
6 determination specifying his or her findings and conclusions. A
7 copy of the determination shall be sent by certified mail,
8 return receipt requested, or served personally upon the
9 applicant, contractor, or license holder.

10 The procedure governing hearings authorized by this
11 Section shall be in accordance with rules promulgated by the
12 Department. A full and complete record shall be kept of all
13 proceedings, including the notice of hearing, complaint, and
14 all other documents in the nature of pleadings, written motions
15 filed in the proceedings, and the report and orders of the
16 Director and Hearing Officer. All testimony shall be reported
17 but need not be transcribed unless the decision is sought to be
18 reviewed under the Administrative Review Law. A copy or copies
19 of the transcript may be obtained by any interested party on
20 payment of the cost of preparing the copy or copies. The
21 Director or Hearing Officer shall, upon his or her own motion
22 or on the written request of any party to the proceeding, issue
23 subpoenas requiring the attendance and the giving of testimony
24 by witnesses, and subpoenas duces tecum requiring the
25 production of books, papers, records, or memoranda. All
26 subpoenas and subpoenas duces tecum issued under this Act may

1 be served by any person of legal age. The fees of witnesses for
2 attendance and travel shall be the same as the fees of
3 witnesses before the courts of this State, such fees to be paid
4 when the witness is excused from further attendance. When the
5 witness is subpoenaed at the instance of the Director or
6 Hearing Officer, such fees shall be paid in the same manner as
7 other expenses of the Department, and when the witness is
8 subpoenaed at the instance of any other party to any such
9 proceeding the Department may require that the cost of service
10 of the subpoena or subpoena duces tecum and the fee of the
11 witness be borne by the party at whose instance the witness is
12 summoned. In such case, the Department in its discretion may
13 require a deposit to cover the cost of such service and witness
14 fees. A subpoena or subpoena duces tecum so issued as above
15 stated shall be served in the same manner as a subpoena issued
16 by a circuit court.

17 Any circuit court of this State, upon the application of
18 the Director, or upon the application of any other party to the
19 proceeding, may, in its discretion, compel the attendance of
20 witnesses, the production of books, papers, records, or
21 memoranda and the giving of testimony before the Director or
22 Hearing Officer conducting an investigation or holding a
23 hearing authorized by this Act, by an attachment for contempt
24 or otherwise, in the same manner as production of evidence may
25 be compelled before the court.

26 The Director or Hearing Officer, or any party in an

1 investigation or hearing before the Department, may cause the
2 depositions of witnesses within this State to be taken in the
3 manner prescribed by law for like depositions in civil actions
4 in courts of this State, and, to that end, compel the
5 attendance of witnesses and the production of books, papers,
6 records, or memoranda.

7 (Source: P.A. 89-143, eff. 7-14-95.)

8 Section 8. The Lead Poisoning Prevention Act is amended by
9 changing Section 11.1 as follows:

10 (410 ILCS 45/11.1) (from Ch. 111 1/2, par. 1311.1)

11 Sec. 11.1. Licensing of lead abatement contractors and
12 workers. Except as otherwise provided in this Act, performing
13 lead abatement or mitigation without a license is a Class A
14 misdemeanor. The Department shall provide by rule for the
15 licensing of lead abatement contractors and lead abatement
16 workers and shall establish standards and procedures for the
17 licensure. The Department may collect a reasonable fee for the
18 licenses. The fees shall be deposited into the Lead Poisoning
19 Screening, Prevention, and Abatement Fund and used by the
20 Department for the costs of licensing lead abatement
21 contractors and workers and other activities prescribed by this
22 Act.

23 The Department shall promote and encourage minorities and
24 females and minority and female owned entities to apply for

1 licensure under this Act as either licensed lead abatement
2 workers or licensed lead abatement contractors.

3 The Department may adopt any rules necessary to ensure
4 proper implementation and administration of this Act and of the
5 federal Toxic Substances Control Act, 15 USC 2682 and 2684, and
6 the regulations promulgated thereunder: Lead; Requirements for
7 Lead-Based Paint Activities (40 CFR 745). The application of
8 this Section shall not be limited to the activities taken in
9 regard to lead poisoned children and shall include all
10 activities related to lead abatement, mitigation and training.

11 Except as otherwise provided by Department rule, on and
12 after the effective date of this amendatory Act of the 98th
13 General Assembly any licensing requirement adopted pursuant to
14 this Section that may be satisfied by an industrial hygienist
15 licensed pursuant to the Industrial Hygienists Licensure Act
16 repealed in this amendatory Act may be satisfied by a Certified
17 Industrial Hygienist certified by the American Board of
18 Industrial Hygiene.

19 (Source: P.A. 89-381, eff. 8-18-95.); and

20 on page 32, below line 26, by inserting the following:

21 "Section 13. The Illinois Pesticide Act is amended by
22 changing Section 19.3 as follows:

23 (415 ILCS 60/19.3)

1 Sec. 19.3. Agrichemical Facility Response Action Program.

2 (a) It is the policy of the State of Illinois that an
3 Agrichemical Facility Response Action Program be implemented
4 to reduce potential agrichemical pollution and minimize
5 environmental degradation risk potential at these sites. In
6 this Section, "agrichemical facility" means a site where
7 agrichemicals are stored or handled, or both, in preparation
8 for end use. "Agrichemical facility" does not include basic
9 manufacturing or central distribution sites utilized only for
10 wholesale purposes. As used in this Section, "agrichemical"
11 means pesticides or commercial fertilizers at an agrichemical
12 facility.

13 The program shall provide guidance for assessing the threat
14 of soil agrichemical contaminants to groundwater and
15 recommending which sites need to establish a voluntary
16 corrective action program.

17 The program shall establish appropriate site-specific soil
18 cleanup objectives, which shall be based on the potential for
19 the agrichemical contaminants to move from the soil to
20 groundwater and the potential of the specific soil agrichemical
21 contaminants to cause an exceedence of a Class I or Class III
22 groundwater quality standard or a health advisory level. The
23 Department shall use the information found and procedures
24 developed in the Agrichemical Facility Site Contamination
25 Study or other appropriate physical evidence to establish the
26 soil agrichemical contaminant levels of concern to groundwater

1 in the various hydrological settings to establish
2 site-specific cleanup objectives.

3 No remediation of a site may be recommended unless (i) the
4 agrichemical contamination level in the soil exceeds the
5 site-specific cleanup objectives or (ii) the agrichemical
6 contaminant level in the soil exceeds levels where physical
7 evidence and risk evaluation indicates probability of the site
8 causing an exceedence of a groundwater quality standard.

9 When a remediation plan must be carried out over a number
10 of years due to limited financial resources of the owner or
11 operator of the agrichemical facility, those soil agrichemical
12 contaminated areas that have the greatest potential to
13 adversely impact vulnerable Class I groundwater aquifers and
14 adjacent potable water wells shall receive the highest priority
15 rating and be remediated first.

16 (b) The Agrichemical Facility Response Action Program
17 Board ("the Board") is created. The Board members shall consist
18 of the following:

19 (1) The Director or the Director's designee.

20 (2) One member who represents pesticide manufacturers.

21 (3) Two members who represent retail agrichemical
22 dealers.

23 (4) One member who represents agrichemical
24 distributors.

25 (5) One member who represents active farmers.

26 (6) One member at large.

1 The public members of the Board shall be appointed by the
2 Governor for terms of 2 years. Those persons on the Board who
3 represent pesticide manufacturers, agrichemical dealers,
4 agrichemical distributors, and farmers shall be selected from
5 recommendations made by the associations whose membership
6 reflects those specific areas of interest. The members of the
7 Board shall be appointed within 90 days after the effective
8 date of this amendatory Act of 1995. Vacancies on the Board
9 shall be filled within 30 days. The Board may fill any
10 membership position vacant for a period exceeding 30 days.

11 The members of the Board shall be paid no compensation, but
12 shall be reimbursed for their expenses incurred in performing
13 their duties. If a civil proceeding is commenced against a
14 Board member arising out of an act or omission occurring within
15 the scope of the Board member's performance of his or her
16 duties under this Section, the State, as provided by rule,
17 shall indemnify the Board member for any damages awarded and
18 court costs and attorney's fees assessed as part of a final and
19 unreversed judgement, or shall pay the judgment, unless the
20 court or jury finds that the conduct or inaction that gave rise
21 to the claim or cause of action was intentional, wilful or
22 wanton misconduct and was not intended to serve or benefit
23 interests of the State.

24 The chairperson of the Board shall be selected by the Board
25 from among the public members.

26 (c) The Board has the authority to do the following:

1 (1) Cooperate with the Department and review and
2 approve an agrichemical facility remediation program as
3 outlined in the handbook or manual as set forth in
4 subdivision (d)(8) of this Section.

5 (2) Review and give final approval to each agrichemical
6 facility corrective action plan.

7 (3) Approve any changes to an agrichemical facility's
8 corrective action plan that may be necessary.

9 (4) Upon completion of the corrective action plan,
10 recommend to the Department that the site-specific cleanup
11 objectives have been met and that a notice of closure be
12 issued by the Department stating that no further remedial
13 action is required to remedy the past agrichemical
14 contamination.

15 (5) When a soil agrichemical contaminant assessment
16 confirms that remedial action is not required in accordance
17 with the Agrichemical Facility Response Action Program,
18 recommend that a notice of closure be issued by the
19 Department stating that no further remedial action is
20 required to remedy the past agrichemical contamination.

21 (6) Periodically review the Department's
22 administration of the Agrichemical Incident Response Trust
23 Fund and actions taken with respect to the Fund. The Board
24 shall also provide advice to the Interagency Committee on
25 Pesticides regarding the proper handling of agrichemical
26 incidents at agrichemical facilities in Illinois.

1 (d) The Director has the authority to do the following:

2 (1) When requested by the owner or operator of an
3 agrichemical facility, may investigate the agrichemical
4 facility site contamination.

5 (2) After completion of the investigation under
6 subdivision (d)(1) of this Section, recommend to the owner
7 or operator of an agrichemical facility that a voluntary
8 assessment be made of the soil agrichemical contaminant
9 when there is evidence that the evaluation of risk
10 indicates that groundwater could be adversely impacted.

11 (3) Review and make recommendations on any corrective
12 action plan submitted by the owner or operator of an
13 agrichemical facility to the Board for final approval.

14 (4) On approval by the Board, issue an order to the
15 owner or operator of an agrichemical facility that has
16 filed a voluntary corrective action plan that the owner or
17 operator may proceed with that plan.

18 (5) Provide remedial project oversight, monitor
19 remedial work progress, and report to the Board on the
20 status of remediation projects.

21 (6) Provide staff to support the activities of the
22 Board.

23 (7) Take appropriate action on the Board's
24 recommendations regarding policy needed to carry out the
25 Board's responsibilities under this Section.

26 (8) In cooperation with the Board, incorporate the

1 following into a handbook or manual: the procedures for
2 site assessment; pesticide constituents of concern and
3 associated parameters; guidance on remediation techniques,
4 land application, and corrective action plans; and other
5 information or instructions that the Department may find
6 necessary.

7 (9) Coordinate preventive response actions at
8 agrichemical facilities pursuant to the Groundwater
9 Quality Standards adopted pursuant to Section 8 of the
10 Illinois Groundwater Protection Act to mitigate resource
11 groundwater impairment.

12 Upon completion of the corrective action plan and upon
13 recommendation of the Board, the Department shall issue a
14 notice of closure stating that site-specific cleanup
15 objectives have been met and no further remedial action is
16 required to remedy the past agrichemical contamination.

17 When a soil agrichemical contaminant assessment confirms
18 that remedial action is not required in accordance with the
19 Agrichemical Facility Response Action Program and upon the
20 recommendation of the Board, a notice of closure shall be
21 issued by the Department stating that no further remedial
22 action is required to remedy the past agrichemical
23 contamination.

24 (e) Upon receipt of notification of an agrichemical
25 contaminant in groundwater pursuant to the Groundwater Quality
26 Standards, the Department shall evaluate the severity of the

1 agrichemical contamination and shall submit to the
2 Environmental Protection Agency an informational notice
3 characterizing it as follows:

4 (1) An agrichemical contaminant in Class I or Class III
5 groundwater has exceeded the levels of a standard adopted
6 pursuant to the Illinois Groundwater Protection Act or a
7 health advisory established by the Illinois Environmental
8 Protection Agency or the United States Environmental
9 Protection Agency; or

10 (2) An agrichemical has been detected at a level that
11 requires preventive notification pursuant to a standard
12 adopted pursuant to the Illinois Groundwater Protection
13 Act.

14 (f) When agrichemical contamination is characterized as in
15 subdivision (e)(1) of this Section, a facility may elect to
16 participate in the Agrichemical Facility Response Action
17 Program. In these instances, the scope of the corrective action
18 plans developed, approved, and completed under this program
19 shall be limited to the soil agrichemical contamination present
20 at the site unless implementation of the plan is coordinated
21 with the Illinois Environmental Protection Agency as follows:

22 (1) Upon receipt of notice of intent to include
23 groundwater in an action by a facility, the Department
24 shall also notify the Illinois Environmental Protection
25 Agency.

26 (2) Upon receipt of the corrective action plan, the

1 Department shall coordinate a joint review of the plan with
2 the Illinois Environmental Protection Agency.

3 (3) The Illinois Environmental Protection Agency may
4 provide a written endorsement of the corrective action
5 plan.

6 (4) The Illinois Environmental Protection Agency may
7 approve a groundwater management zone for a period of 5
8 years after the implementation of the corrective action
9 plan to allow for groundwater impairment mitigation
10 results.

11 (5) The Department, in cooperation with the Illinois
12 Environmental Protection Agency, shall recommend a
13 proposed corrective action plan to the Board for final
14 approval to proceed with remediation. The recommendation
15 shall be based on the joint review conducted under
16 subdivision (f)(2) of this Section and the status of any
17 endorsement issued under subdivision (f)(3) of this
18 Section.

19 (6) The Department, in cooperation with the Illinois
20 Environmental Protection Agency, shall provide remedial
21 project oversight, monitor remedial work progress, and
22 report to the Board on the status of the remediation
23 project.

24 (7) The Department shall, upon completion of the
25 corrective action plan and recommendation of the Board,
26 issue a notice of closure stating that no further remedial

1 action is required to remedy the past agrichemical
2 contamination.

3 (g) When an owner or operator of an agrichemical facility
4 initiates a soil contamination assessment on the owner's or
5 operator's own volition and independent of any requirement
6 under this Section 19.3, information contained in that
7 assessment may be held as confidential information by the owner
8 or operator of the facility.

9 (h) Except as otherwise provided by Department rule, on and
10 after the effective date of this amendatory Act of the 98th
11 General Assembly any Agrichemical Facility Response Action
12 Program requirement that may be satisfied by an industrial
13 hygienist licensed pursuant to the Industrial Hygienists
14 Licensure Act repealed in this amendatory Act may be satisfied
15 by a Certified Industrial Hygienist certified by the American
16 Board of Industrial Hygiene.

17 (Source: P.A. 92-113, eff. 7-20-01.)".